Chapter 9

INDIA

TARIFFS

1) High Tariff Products

<Outline of the measure>

The simple average bound tariff rate for non-agricultural products is 34.7 % as a result of the Uruguay Round. Bound tariff rates were, with some exceptions, concentrated around 40% and 25%. For processed products, bound rates are unified at 40% for end products and 25% for raw materials, intermediate products, parts and equipment.

Since fiscal year 2003, the Government of India has continued to implement reductions of the basic tariff rate, setting forth the objectives of (1) reducing the basic tariff rate (applied tariff rate) to the ASEAN level, and (2) shifting to a tariff system that applies a 10% tariff to finished products and a 5%-7.5% tariff to raw materials and parts. In its budget proposal for fiscal year 2007, the government implemented a tariff reduction on specific capital goods and some parts and raw materials in January 2007, and reduced the basic tariff rate on automobile parts, electrical parts and machinery parts to 7.5%. In addition, in March 2007, the government reduced the maximum basic tariff rate on essentially all bound items excluding agricultural products from 12.5% to 10%, in principle. Through these series of measures, India appears to have achieved most of its objectives, with the exception of tariffs on some parts and raw materials, and can be evaluated to a certain degree as promoting free trade.

On the other hand, the binding coverage for non-agricultural products is 69.8%. Unbound items include automobiles (applied tariff rate: 60% for cars). Both specific duties and *ad valorem* duties are applied to clothing (applied tariff rate: 19.9% *ad valorem*). Given these rates, there appears to be significant room for improvement.

<Problems under international rules>

Higher tariff rates themselves do not, *per se*, conflict with WTO Agreements unless they exceed the bound rates. However, from the viewpoint of promoting free trade and enhancing economic welfare, it is desirable to reduce tariff rates to the lowest possible rate.

The divergence between bound tariff rates and applied tariff rates, as well as low binding coverage in India's tariff rate structure, are not inconsistent with WTO Agreements, but since they make it possible for authorities to set arbitrary applied tariff rates it is desirable that bound tariff rates be reduced to the level of applied tariff rates and that unbound items be bound from the point of view of increasing predictability.

<Recent developments>

From March 2008, the applied tariff rates on some capital goods and parts/raw materials were lowered in order to stimulate domestic manufacturing and promote exports.

Market access negotiations in the DDA for non-agricultural products are ongoing and include negotiations on reducing and eliminating tariff rates. Negotiations for concluding the Japan-India Economic Partnership Agreement have been in progress since January 2007.

2) Introduction of special additional tariffs on imported products

<Outline of the measure>

In India, customs duties comprising the basic customs duties (the above-mentioned applied tariff rates), countervailing duties, the additional customs duty and the education tax are collected by the customs authorities upon customs clearance. Assuming the assessment value on imports (C.I.F. price and landing charges) is 100, the basic customs duty 10%, the additional tariff rate 18%, and the additional customs duty 4%, as these figures were as of February 2010, then the final total tariff relative to the assessment value of 100 is 24.42, a higher level than the applied tariff rates that India usually presents at international negotiation venues such as the WTO. The method of calculating total tariffs is given in the table below.

Table: Method of Calculating Total Tariff Rates (where the valuation amount is 100 and the basic tariff rate is 10%)

	Item	Tariff rate	Amount (Tax)	Total
	Assessment Value (CIF value and landing charges)		100	
A	Basic Customs duty (BCD)	10.0%	10	
B	Total			110
C	Additional Duty (Countervailing duty) (CVD) + Education Tax	8.24%	9.06	
D	Total			119.06
E	Education Tax x (A+C)	3%	0.57	
F	Additional Customs Duty (ACD) x (D+E)	4%	4.79	
G	Total			124.42
	Total Customs Duty (A+C+E+F)		24.42	

<Problems under international rules>

As indicated above, the simple average bound tariff rate on non-agricultural products agreed to by India as a result of the Uruguay Round is 34.9%. However, the basic tariff rate is 10%, below the average bound rate. This basic tariff rate, so long as it is below the bound rate for individual items, is consistent with GATT Article II. On the other hand, the additional customs duty and the education tax are considered to come under the category of “ordinary customs duty” or “other duties or charges” as provided for in GATT Article II, paragraph 1(b). If these tariffs come under the former, then the tariffs imposed exceed the concession commitment regarding products for which a commitment was made to remove tariffs under ITA (Information Technology Agreement). If these tariffs come under the latter, they are in violation of the same concession commitment because they are not actually stated in India’s concession schedule (as they are required to be). For this reason, the additional customs duty and the education tax are likely to be in violation of GATT Article II regardless of the category they fall under.

In addition, at the Indian TPR in the WTO held in May 2007, India replied that the additional customs duty is an inland duty levied for the purpose of countervailing the value-added tax and the central sales tax. India also stated with respect to the education tax, which is imposed twice on imported products, that the first tax is an inland duty while the second tax is a customs duty. If this tax is regarded as an inland duty, it is

covered not by GATT Article II but by GATT Article III, which stipulates national treatment. On this point, Japanese companies reported that, even for imported products for which the additional customs duty is imposed at customs, the value added tax and central sales tax are imposed at India's domestic distribution stage. Thus, the additional customs duty and the education tax may be in violation of GATT Article III.

<Recent developments>

Japan has been requesting India to improve its tax system, including the additional customs duty, to be consistent with the WTO Agreement and highly transparent through Japan-India EPA negotiations etc. Regarding the refund system of the additional customs duty, problems were pointed out, including excessively strict conditions of application for refund and unclear details of the procedure. In November 2008, a relaxation of the conditions of application was announced. However, even after the introduction of new conditions, there have been only few cases in which the applicant could actually receive a refund. Therefore, further improvement of the system is necessary.

In 2009, Japan encouraged the Indian government to improve the system at the vice ministerial level as well as on a private basis through the Japan-India Business Cooperation Committee and other opportunities. In response, India answered that it would promptly refund additional customs duties with respect to refund applications that had already been filed. Furthermore, on February 27, 2010, the Indian government announced, in a notification, exemption from the additional customs duty imposed on packaged products. On the other hand, some items are not subject to exemption from taxation. Therefore, it is necessary to pay attention to India's future responses, including the status of refund.

The United States filed a claim with the WTO regarding this measure. In July 2008, the Panel rejected the United State's claim, finding that the United States failed to establish that the Indian measure is inconsistent with Article II:2 of GATT. The United States appealed the Panel's decision to the Appellate Body (Japan participated as a third party). In October 2008, the Appellate Body held that the additional customs duty would be considered inconsistent with Article II:1(b) of GATT insofar as it results in the imposition of charges on imports in excess of the excise duties applied on like domestic products. Nevertheless, the Panel having made no findings of fact regarding the above, the Appellate Body made no recommendation regarding the measure.

<Reference 1: Outline of the refund system for the additional customs duty>

On September 14, 2007, India's Ministry of Finance announced a notification (No. 102/2007) concerning a refund of the uniform 4% additional customs duty imposed on products imported into India

(see http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k7/cs102-2k7.htm).

This notification has been applied to all imported products which clear customs after the date of the notification and states that the additional duty of customs paid on products (basically, only finished products) imported going through the conditions and procedures given below will be refunded afterward.

(1) The importer must pay all customs duties (base tariff, countervailing duty, and education tax), including additional duty of customs, at the time of customs clearance.

(2) The importer must indicate on invoices that are issued when said imported products are sold that they are not products such as parts or raw materials that can receive an input credit (see note below).

(3) The importer must pay all value added tax (VAT), state sales tax, and central sales tax (CST) imposed on domestic sales of said products.

(4) The importer may submit an application for a refund of additional duty of customs to the customs authorities of the port into which said products were transported, attaching the three documents identified below.

a. Documents evidencing payment of additional duty of customs on said imported goods

b. An invoice for the domestic sale of said imported goods

c. Evidences of payment of VAT and other sales taxes imposed upon the domestic sale of said imported goods

(5) An amount equivalent to additional duty of customs paid will be refunded to the importer with respect to refund applications that have been determined by customs authorities to have satisfied the above requirements.

Note: The CENVAT credit regulations (2004) allow a manufacturer to pay taxes to the tax authorities after deducting, as an input credit, the amount of excise tax (including additional duty of customs) paid on parts used in the firm's products from the total amount of excise taxes paid on said products.

<Reference 2: Goods and service tax>

In a government budget draft for fiscal year 2006, the Indian government announced that it would organize and integrate indirect taxes imposed by the central and state governments into a goods and service tax (GST) and that the GST would be effective from April 2010. In response to this, vigorous discussions have been held within India. For example, the Empowered Committee of State Finance Ministers presented a discussion paper in November 2009. Furthermore, the 13th Finance Commission Report was submitted to the President at the end of 2009. Additionally, at the time of publication of the Indian central government's budget for fiscal year 2010-2011, Finance Minister Mukherjee made a remark to the effect that India would make efforts to start implementing GST from April 1, 2011. However, there have been many news reports that the introduction of GST would be significantly later than the original schedule for reasons such as the necessity of long periods of time needed for constitutional revisions, which serve as a premise of the introduction of GST, and coordination with state governments. The domestic situation of India involves many unclear points. In particular, regarding additional customs duty, while the Empowered Committee of State Finance Ministers proposes, in its discussion paper, the abolition of the additional customs duty along with the introduction of GST, the 13th Finance Commission Report does not refer to the additional customs duty. It is necessary to continuously keep a watch on the trends of discussions within India.

ANTI-DUMPING MEASURES

Abuse of AD measures and lack of transparency

<Outline of the measure>

India, which is the world's most frequent utilizer of AD measures, imposed 386 AD measures from 1995 to the first half of 2009. Among these, 19 cases were against Japan. The measures were mainly imposed on chemical products.

<Problems under international rules>

In AD investigations, most of the basis for determinations by the investigating authorities is non-transparent. Operational improvements should be made. The following is a description of the issues:

1) In determining AD duty rates, India does not levy AD duties according to dumping margins based on Article 9.1 of the AD Agreement, but rather levies just enough duty to remove injury to domestic industries (the lesser duty rule). The injury margin is thus calculated separately. However, despite a competitive market and little

disparity in the Indian market price among imported goods, there are cases where there is a large disparity in injury margin by company. In the event that the investigating authority's basis for judgment is uncertain, it is difficult for the company being investigated to confirm the facts.

2) In the injury determination, the final decision does not cover all data related to the 15 factors of injury under Article 3.4 of the AD Agreement, which should be examined by the authorities, and the disclosure in some cases does not meet the obligation of the authorities provided in Article 12.2 of the AD Agreement. Japanese companies, as the interested parties, could not conduct any effective data analysis regarding the grounds of the decision, which limited their ability to offer rebuttal arguments. As a result, they lost the opportunity to protect their own interests. This situation is inappropriate pursuant to Article 6.1 of the AD Agreement.

3) An investigation on Hydroxylamine Sulfate was started in 2000, and the investigation period was determined to be from July 1, 1999 to December 31, 1999 (6 months); for Sodium Hydroxide, for which an investigation started in the same year, the investigation period was determined to be from April 1, 1998 to September 30, 1999 (18 months). The investigation periods vary by case, but the Indian Government has provided no explanation for the reasons. If periods are selected arbitrarily in accordance with a decline of international prices or exchange rate fluctuations, it would be inappropriate pursuant to Article 2 of the AD Agreement.

4) Article 12.2 of the AD Agreement requires public notification regarding the termination of preliminary determinations, final determinations, and AD duties. In addition, the Article states that said notifications and reports are to be sent to stakeholders. However, there are cases where it is unclear whether notifications are being properly made to stakeholders, including intergovernmental notifications made to the Japanese Government. Japan's concern continues regarding these procedures.

<Recent developments>

With regard to the AD investigation concerning Poly Vinyl Chloride (PVC) initiated in June 2006, the product scope under investigation was not clear; it seemed to include some specialty products (products with high value added) that were not manufactured by Indian industry in a sufficient amount to meet domestic demand. Japan asked the Indian investigative authorities to exclude such specialty products from the product scope under investigation, arguing that: (1) the specialty products are different from general-purpose products manufactured by Indian companies in their chemical and physical properties and are not under the same conditions of competing from the point of view of their end uses and functions, and that: (2) the imposition of AD duties on the specialty products would lead to cost increases for domestic user industries in India. In November 2006, the Indian complainant companies submitted a document noting that the specialty products described by Japan were not included the product scope, and Japan's arguments were accepted.

In 2003, the EU requested bilateral consultation with India pursuant to the WTO dispute settlement procedures, arguing that the AD measures by India were inconsistent with the AD Agreement. Since then, the number of AD investigations initiated and AD measures applied by the Indian Government has been on a declining trend. However, India is still one of the world's most frequent appliers of AD measures. Japan needs to continue monitoring AD measures by the Indian Government, pointing out any problems inconsistent with the AD Agreement, and requesting improvement.

Standards and Conformity Assessment Systems

India's Technical Regulations for Steel Products

<Outline of measures>

In September 2008, the Indian government published in its official gazette the Steel and Steel Products (Quality Control) First Order and the Steel and Steel Products (Quality Control) Second Order, and announced that technical regulations would be implemented for certain steel products, from September 12, 2008 under the First Order and from February 12, 2009 under the Second Order. On and after these dates, steel manufacturing companies would be required to obtain the Indian industrial standards (Bureau of Indian Standards [BIS] Standards) for specified steel products imported into India and to ensure conformity with these standards. There were six products covered in the First Order (e.g., bar steel and steel wire) and eleven products (e.g., magnetic steel sheets, tin, heavy plate for pressure vessels, hot-dip galvanized steel sheets, and semi-finished steel products for general structure) in the Second Order for a total of 17 products, including steel products that Japan exports to India.

<Problems under international rules>

The Indian government has explained that its objectives in establishing this system are to ensure the safety and quality of products and to protect the environment, but Article 2.2 of the TBT Agreement stipulates that "technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create"; and the introduction of these standards constitutes a violation unless assurance can be given that these standards are not more trade-restrictive than necessary in light of the objectives.

Portions of the BIS Standards differ in content from existing international standards for products for which international standards have been established and, because Article 2.4 of the TBT Agreement stipulates "Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical

regulations," these standards violate the Agreement unless the government can demonstrate the need for not using international standards.

<Recent developments>

During the period from the end of 2008 to early February in 2009, industrial representatives and the governments of Japan, the EU, and South Korea expressed to the Indian government their concerns about the introduction of technical regulations for steel products. In response, the Indian government announced on February 10, 2009 a one-year postponement of the implementation date for the Second Order and the deletion of three items from the subject-matter of the technical regulations: rod stock/wire rod for construction use, tin, and hot-rolled steel sheets.

After that, countries also expressed concerns at the TBT Meetings of March, June, and November 2009. The Indian government must be urged further to comply with the WTO Agreement.

TRADE IN SERVICES

Foreign Investment Restrictions, etc

<Outline of the measure>

In February 2002, the Ministry of Commerce and Industry changed the foreign investment license regime to a negative list system. As of the end of 2008, foreign direct investment up to 100 percent is automatically allowed in industries/investments that are not included in the following list (notification to the Reserve Bank of India is necessary):

(1) two industries reserved for state-owned firms (nuclear energy and railway);

(2) six industries for which a license is necessary under the Industry Law of 1951 (alcoholic beverages, tobacco, aviation/space/defense electronics, industrial explosives, hazardous chemicals and one of the pharmaceuticals which is provided in the Pharmaceuticals Act.);

(3) investments exceeding 24% in about 21 industries(Coverage industries were reduced from 114 to 35 by the notification in February 2008, then reduced to 21 by the notification in October 2008.) that are reserved for small scale industries;

(4) investments conflicting with the location restrictions designated in the new industrial policy of 1991;

(5) when foreign firms already have entered into capital/technology partnerships with Indian firms to establish companies in the same industry (government permits are not required in the following cases:

(i) when investors are venture capital funds;

(ii) existing joint-venture partners hold a share of less than 3%; and

(iii) existing businesses by joint-venture or tie-up are in a rest condition);

(6) capital injection to existing Indian firms (listed firms or financial services firms);

(7) investment in the following industries, as to which foreign investment is prohibited (gambling, lottery, real-estate-related business other than real-estate development and construction business approved by 2005 Government Note No. 2 (Press Note 2)), nuclear power, agriculture (excluding plants and flowers, gardening, seed cultivation, livestock raising, and vegetable cultivation under guidelines), farming business excluding tea farming), and retail businesses except single brand products sales approved by the government announcement dated 10 February 2006 (Press Note No. 3); and

(8) investments in 22 industries for which individual equity contribution restrictions/guidelines are set.

Major restrictions relating to the (8) above are as follows:

- Financial Services

In March 2004, India relaxed restrictions on foreign investment in private banks, raising the ceiling on permissible foreign ownership from 49% to 74%. In addition, foreign banks may now establish wholly-owned subsidiaries in India, provided that they: (1) are under the jurisdiction of the competent authorities in their home countries, and (2) meet approval requirements of India's central bank (RBI). The current banking regulation law stipulates that foreign voting rights should be restricted to less than 10% of all voting rights in domestic private banks. But in May 2005, abolition of these restrictions was adopted at a Cabinet meeting. This was to be put into effect through an official notice (and announcement of new guidelines) by the RBI, but no notice had been issued as of December 2007.

For insurance businesses, the Insurance Regulation Development Authority (IRDA) Law was enacted in December 1999. Under the law, the insurance market, which had consisted of a government run monopoly, was privatized and opened to foreign investments. In the July 2004 budget bill, India proposed that the ceiling on permissible foreign investments in insurance companies be raised from 26% to 49%. The bill was sent to the Parliament after being approved at a Cabinet meeting in October

2008, but it was not passed. Although discussions have been subsequently held within relevant ministries, no formal decision had been made as of March 2009.

As for non-banks, foreign investment up to 100 percent is permitted in 19 sectors, including for designated merchant banks and home financing. However, minimum capital requirements are prescribed according to equity contributions. These investments are also automatically permitted on condition that the guidelines of the Reserve Bank of India are followed.

- Distribution Services

In a government announcement dated 10 February 2006 (Press Note No. 3), the Indian government formally decided on a partial opening of the market to retail businesses for which foreign capital participation was previously prohibited, and placed this decision into effect the same day. The following conditions apply to the participation of foreign capital in this sector: (1) prior approval must be obtained from the Foreign Investment Promotion Board (FIPB) of the Ministry of Finance; and (2) the maximum percentage of foreign equity participation is 51%. In addition, the following guidelines have been established: (1) products sold are to be limited to "single brand" products; and (2) the brand name of the products to be sold will be assigned in the process of product manufacturing. If these guidelines are followed, brand makers can open retail stores through a 51% investment of their own capital. On the other hand, large-scale retail chains such as supermarkets do not satisfy the requirement of the above guidelines that "single brand" products will be sold, and participation is not allowed. (For cases where the objective is the test marketing of goods which are planned to be manufactured in India, 100% investment companies can conduct retail sales for a fixed period on the condition that they receive prior approval from FIPB). With regard to retailers, except for cases in which goods held on reserve for small-scale businesses are being handled, 100% investment of foreign capital has been deemed to be possible (store sales are also possible through a cash and carry method) through an automatic licensing method (prior approval of the government is not necessary; all that is required is notification after the fact). Regarding the liberalization of foreign retail services, there has to be no movement despite continuous positive discussion among the relevant agencies led by the Ministry of Commerce.

<Problems under international rules>

Although the WTO Agreements contain no general rules on investment, the GATS disciplines service trade activities relating to investment in sectors in which commercial presence obligations are included in a Member's schedule of services commitments. The various restrictions on foreign investment described above do not violate the WTO Agreements so long as the restrictions do not contravene India's GATS commitments. However, it is desirable that liberalization efforts be made with the spirit of the WTO and the GATS in mind.

<Recent developments>

Japan is monitoring efforts in India to amend laws that would tighten foreign investment regulations. Japan also is requesting in bilateral dialogues and through the WTO services negotiations that foreign investment restrictions be relaxed. India deregulated FDI for the following area in 2009:

(February 2009, Press Notes 2, 3, and 4: Notification on Revisions to Definitions Concerning Reinvestment by Foreign Companies)

・ Press Note 2: Clarification of the method of calculating foreign equity ratios in reinvestment and definitions

If an Indian company which accepts investment from a non-resident is a company of which "50% or more of stocks are held (ownership)" by residents in India and of which "the majority of board members have been designated (management authority)" by residents in India, reinvestment by the company shall be deemed to be investment by a purely domestic company (FDI = 0%). Other reinvestments shall be deemed to be 100% FDI. Investments by non-residents include not only FDI but also foreign institutional investment (FII), non-resident Indian investment (NRI investment), depositary receipts (ADR and GDR), foreign currency convertible bonds (FCCB), and other foreign currency convertible debentures and preferred stocks.

・ Press Note 3: Transfer of ownership and management authority to non-residents

In the sectors subject to the foreign investment restrictions, where a new company established through reinvestment is "owned" or "managed" by a non-resident, or where the "ownership" or "management authority" of the invested company is transferred to a non-resident, it is necessary to obtain prior permission from the Foreign Investment Promotion Board (FIPB).

・ Press Note 4: Investment rules and definitions in the case where reinvestment is FDI (supplement to Press Note 2)

Where reinvestment is deemed to be FDI, based on Press Note 2, if the invested company is a "pure operational company" or an "operational and investment company," investment pursuant to the conventional FDI rules is possible. If the invested company is a "pure investment company" or a "holding company," prior permission from the FIPB is required.

(Other notifications concerning FDI)

・ The Indian government lifted the ceiling on permissible foreign investments in 21 fields, for which foreign equity ratios of 24% or more had been prohibited for the purpose of protecting and developing small and medium-sized companies. However, no change was made regarding obtaining industrial licenses or the obligation to export 50% or more of products. (Press Note 6, 2009)

・ Regarding the ceiling on permissible foreign investments in commodity futures trade businesses (49%) and the ceiling on permissible investments therein by a single person (5%), some existing companies had foreign investments beyond the ceilings. Therefore, the Indian government gave them a grace period until September 30, 2009 to comply with the restrictions (Press Note 5, 2009). As procedural difficulties arose thereafter, the Indian government extended the period to March 31, 2010n (Press Note 7, 2009).

・ Regarding the payment of royalties for technology transfers to foreign companies, the requirements for automatic licensing (lump-sum payment of 2 million dollars or less, 5% or less of domestic sales, and 8% or less of export) were lifted. At the same time, for the payment of royalties for trademark rights and for the use of trademarks, the requirements (1% or less of domestic sales and 2% or less of export) were also lifted. (Press Note 8, 2009)

PROTECTION OF INTELLECTUAL PROPERTY

1) Protection of Patents in Relation to Pharmaceuticals, etc.

<Outline of the measure>

Article 27.1 of the TRIPS Agreement stipulates that patents shall be available for any inventions, whether products or processes. However, a 10-year transition period (until January 1, 2005) was granted to developing country Members which lacked patent systems for items such as pharmaceuticals and chemicals (Article 65.4). India did not maintain a system for product patents for pharmaceuticals (Patent Act of 1970). In December 2004, at the end of the implementation term, the President of India decreed the Patents (Amendment) Ordinance of 2004 (Ordinance No. 7 of 2004), introducing a product patent system. Later, (the third) amended Patent Act of 2005 was deliberated, adopted in the Parliament, and was made public on April 5, 2005. With the exception of some provisions, the amended law was retroactively enforced starting January 1. The main points of the reformed law include: (1) introduction of a product patent system; (2) introduction of the definition of pharmaceutical substances; (3) eliminating the provisions for exclusive marketing rights (EMR); (4) limiting the rights of patent rights holders and others through mailbox applications; and (5) introduction of compulsory licenses for pharmaceutical products (both manufacturing and export).

<Problems under international rules and recent developments>

It is highly appreciated that a product patent system was introduced and TRIPS obligations were implemented. However, regarding regulations related to “non-inventions,” problems have been noted with relation to Article 27, Paragraph 1 of the TRIPS Agreement, which prohibits discrimination in technological sectors. A revised version of the report of the Technical Expert Group on Patent Law Issues (chairman: Mr.

Mashelkar), which is a committee established by the Indian Ministry of Commerce and Industry, was published in March 2009. The report draws no conclusion, stating that said group has not been granted the authority to examine consistency between Section 3(d) of the Indian Patent Act and the TRIPS Agreement in relation to this case. Therefore, it is necessary to pay close attention in the future to the practices of the product patent system, including decisions during patent examination.

Incidentally, while there are requests for more generous protection of test data for pharmaceutical products, the Indian government's report on test data for pharmaceutical products, published in March 2007, recommends five years as the period of protection for test data for pharmaceutical products. It is necessary to keep a watch on the Indian government's efforts from the perspective of Article 39(3) of the TRIPS Agreement providing for the obligation to protect test data for pharmaceutical products, etc.

2) Issues related to Counterfeit, Pirated and other Infringing Products, etc.

India maintains a strong legal system to protect intellectual property rights that is consistent with the TRIPS Agreement, and Japan welcomes India's commitment to put this system in place.

The anti-counterfeit tariff registration system known as ICEGATE was established in December 2007 and monitoring of the inflow of counterfeit items has been strengthened at the border. This system requires companies to register their acquisition of trademark rights and design rights in advance via the Internet and thereby provides prior notification to customs officials of the inflow of goods pertaining to these rights, raising their level of vigilance.

However, enforcement is limited and Japanese companies, such as the automobile and electronics industries complain of the vast quantities of pirated software and games that are sold in India. In addition, significant amounts of counterfeit and pirated products enter India from other countries. From the perspective of appropriate protection of intellectual properties and secure implementation of the TRIPS Agreement, it is, necessary to closely monitor India's efforts to combat intellectual property infringement to ensure compliance with India's obligations under the TRIPS Agreement.